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May 31, 2024

VIA ECF

Hon. Arun Subramanian, United States District Judge
United States District Court for the Southern District of New York
500 Pearl Street, Courtroom 15A
New York, New York 10007

Re: 360 N. Rodeo Drive, LP v. Wells Fargo Bank, N.A., et al., Case No. 1:22-cv-00767 (AS)

Dear Judge Subramanian:

We write on behalf of Defendants pursuant to Rule 11 of the Court's Individual Practices in Civil Cases and the Stipulated Protective Order (ECF No. 55) to request leave to file under seal one document offered in support of Defendants' Motion of Summary Judgment against Plaintiff.

Certain Exhibits to the Declaration of Juthamas J. Suwatanapongched ("the Declaration") in support of the Motion were designated confidential by Plaintiff in document production, and certain passages in the Deposition of Aron Harkham were so designated and separately bound in accordance with the Protective Order.

Paragraph 6 of the Protective Order requires that the "parties will use their best efforts to minimize" filings under seal. Before filing the Motion, Defendants shared the motion papers with Plaintiff so that Plaintiff might re-evaluate its confidentiality designations. As noted in Paragraph 14 of the Declaration, Plaintiff has determined that the emails designated Confidential and attached as Exhibits to the Declaration do not need to be submitted under seal. Similarly, Plaintiff has determined that certain passages in the Aron Harkham Deposition do not need to be submitted under seal. One separately bound portion for which Plaintiff wishes to maintain confidentiality, comprising pages 59-72, could be and is omitted from the transcript attached as Exhibit 12 to the Declaration.

That leaves Exhibit 8 to the Declaration, which is a Microsoft Excel spreadsheet of real estate properties owned or partially owned by Efrem Harkham. The spreadsheet, which had been submitted to a lender, was updated on June 25, 2021, and attached to a June 25 email that makes up part of Exhibit 1 to the Declaration. The spreadsheet contains nonpublic financial information about each of the properties, including, but not limited to the properties' respective market values, mortgage balances, rental revenues, operating expenses, and net cash flow. The spreadsheet has been removed from Exhibit 8 of today's publicly filed copy of the Declaration. The Microsoft Excel version of the spreadsheet has been converted to pdf in the version of the Declaration filed under seal today.



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There is ample authority for such material to be sealed *E.g., In re B & C KB Holding GmbH*, 22-mc-180, 2023 WL 2021299, at *1 (S.D.N.Y. Feb. 14, 2023) (“courts in this District routinely permit parties to seal or redact commercially sensitive information in order to protect confidential business and financial information”); *see also Valassis Commc’ns, Inc. v. News Corp.*, 17-cv-7378, 2020 WL 2190708, at *3 (S.D.N.Y. May 5, 2020) (granting plaintiff’s motion to seal and holding that plaintiff’s “interest in protecting the sensitive business information of its active business units, such as the financial metrics of [a business] division, outweighs the public’s presumed right of access at this stage of the litigation. . . . [Plaintiff]’s proposed redactions covering this information are narrowly tailored to protect these specific financial metrics”). Thus, it is appropriate for the Court to grant this Motion, which is narrowly tailored to seal the financial information contained in a single spreadsheet.

We thank the Court for its consideration.

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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*Attorneys for Defendants Wells Fargo Bank, N.A., as
Trustee for the Benefit of the Holders of Comm 2017-
COR2 Mortgage Trust Commercial Mortgage Pass-
Through Certificates, Series 2017-COR2 and Midland
Loan Services, a Division of PNC Bank, N.A.*

The request is GRANTED.
The Clerk of Court is
directed to close Dkt. 85.
SO ORDERED.

A handwritten signature in black ink, appearing to read "Arun Subramanian".

Arun Subramanian, U.S.D.J.
Date: June 3, 2024